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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 856

W. B. WORTHEN COMPANY, AGENT, GEORGE G. WORTHEN AND MOLLIE P. WORTHEN,

Appellants,

vs.

MRS. W. D. THOMAS.

STATEMENT AS TO JURISDICTION ON APPEAL.

The appellants, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully state:

(a) This is an appeal from a judgment of the Supreme Court of Arkansas taken under the provisions of the United States Code, Title 28, Section 344 (Judicial Code, Section 237), Paragraph (a) and Amendments, and involves the validity under the Constitution of the United States of an act adopted by the General Assembly of the State of Arkansas, approved March 16, 1933, numbered Act 102.

(b) Said Act is here set forth *in extenso*, to wit:

ACT 102.

"AN ACT TO EXTEND THE EXEMPTION LAWS OF THIS STATE."

"Be it enacted by the General Assembly of the State of Arkansas:

"SECTION 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act.

"SECTION 2. All laws and parts of laws in conflict herewith are hereby repealed, provided however, that nothing in this act shall be construed to repeal, modify or alter the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931.

"SECTION 3. It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources, and to be deprived of the same will seriously affect the well being of a great number of the citizens of this State who would thereby be reduced to the position of becoming public charges to the great harm and detriment of the entire State, an emergency is hereby declared to exist,

and this Act shall be in full force and effect from and after its passage.

"Approved March 16th, 1933."

Acts of Arkansas, Forty-ninth General Assembly, 1933, page 321.

(c) This case was decided by the Supreme Court of Arkansas November 27, 1933, and petition for rehearing was overruled January 8, 1934, the Supreme Court judgment then becoming final, and this application for appeal was presented to the Chief Justice of the Arkansas Supreme Court February 9, 1934.

(d) Appellant W. B. Worthen Company, agent, recovered a judgment against appellee upon contract in the Circuit Court of Pulaski County, Arkansas, in the sum of twelve hundred eleven and 40/100 dollars ($1,211.40), with interest and costs, on the 31st day of August, 1932, and on the 10th day of March, 1933, there issued from that court a writ of garnishment directed to and which was served upon Missouri State Life Insurance Company, a life insurance company which then owed appellee, the judgment debtor, the sum of $5,057.80 upon a life insurance policy. The writ of garnishment was served upon the insurance company on the 10th of March, 1933, and under the Arkansas laws became a lien on the credit from that date. April 5, 1933, appellee filed a motion in writing in the circuit court to dismiss the writ of garnishment, stating the facts as to the judgment and the issuance of the writ and that the Life Insurance Company is indebted to her in the sum of the policy, $5,057.80, she being beneficiary in the policy, which was upon the life of her husband who died March 5, 1933, and that under the law such sum is exempt from liability or seizure under any judicial process of any court and is not subject to payment of any debt by contract by any writ, order, judgment or decree of any court and claiming the

sum as exempt from garnishment, seizure or attachment and asking that it be released from the lien of the writ. On the same day the insurance company filed its answer to the writ, pleading that by the provisions of Act 102 of the General Assembly of the State of Arkansas, adopted at its 1933 session, all moneys payable to any resident of the State under policies of insurance are exempt and not subject to seizure under any judicial process, and asking to be discharged from the writ and authorized to pay the proceeds to appellee. April 7th the circuit court entered an order releasing all of the proceeds of the policy except $2,000.00, which it ordered to be paid into the registry of the court, which was done.

Appellant W. B. Worthen Company, agent, filed its response to appellee's motion April 20, 1933, stating the fact of the rendition of the judgment; that an execution had been issued thereon and had been returned unsatisfied. That the writ of garnishment had issued on March 10, 1933, being served and the appellant thereby obtained a lien on said sum under the law of the State of Arkansas from the date of service, which was March 10, 1933. That there has always been under the law of Arkansas a right to a writ of garnishment and such lien could not lawfully be released or dissolved by the adoption of Act 102 on the 16th of March, 1933. That it is not intended that Act 102 should have an effect on actions then pending, and that if it should be held to have effect of dissolving garnishment in this case, the appellant's rights under Article 1, Section 10 of the United States Constitution are impaired, and asking that the motion be denied, and for an order upon the clerk of the court to pay the judgment from the proceeds of the sum held in the registry of the court. May 12, 1933, the circuit court entered a judgment allowing appellee's claim of exemptions on the ground that the proceeds of the policy were exempt from liability or seizure from any judicial

process of any court and granted appellee's motion to dismiss and dissolve the garnishment and release the lien thereof, and directed that the sum in the registry of the court be paid to appellee.

Appeal to the Supreme Court of Arkansas was taken, judgment in the circuit court was superseded, appellants George G. Worthen and Mollie P. Worthen becoming sureties upon such supersedeas bond, and on November 27, 1933, the Supreme Court of Arkansas affirmed the judgment of the circuit court, holding that the act was valid and that no judicial process is available to the appellant W. B. Worthen Company, agent, to collect its judgment from the proceeds of the insurance policy, and entered judgment against all three of these appellants for costs.

A petition for rehearing was denied January 8, 1934. In its brief to the Supreme Court of Arkansas, appellant W. B. Worthen Company, agent, set up its claims that the act violates the United States Constitution, impairing the obligations of contract and denying due process of law and equal protection of the laws, and this claim was repeated on the petition for rehearing.

To sustain the jurisdiction of this Court and to reverse this cause, appellants rely on the following cases:

Arthur Bronson v. *John H. Kinzie*, 1 Howard 311;
Gunn v. *Barry*, 15 Wall. 610;
Edwards v. *Kearzey*, 96 U. S. 595;
Memphis v. *United States*, 97 U. S. 293;
Antoni v. *Greenhaw*, 107 U. S. 798;
Conn. Mutual Life Ins. Co. v. *Cushman*, 108 U. S. 65;
Port of Mobile v. *United States*, 116 U. S. 305;
Seibert v. *United States*, 122 U. S. 294;
McGahey v. *Virginia*, 135 U. S. 694;
Louisiana v. *New Orleans*, 215 U. S. 178.
Kuhn v. *Fairmont Coal Co.*, 215 U. S. 369;

Northern Pacific Railway Co. v. *Wall*, 241 U. S. 91;
Bank of Minden v. *Clement*, 256 U. S. 126;
Shwab v. *Doyle*, 258 U. S. 534;
Hardware Dealers' Mutual Fire Ins. Co. v. *Glidden Company*, 284 U. S. 151.

It is, therefore, respectfully submitted that this Court has jurisdiction to hear and determine this appeal.

W. B. WORTHEN COMPANY,
Agent,
GEORGE G. WORTHEN,
MOLLIE P. WORTHEN,
By HENRY M. ARMISTEAD,
EUGENE H. MURPHY,
FRANCIS T. MURPHY,
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